

REMARKS

Claims 1–18 are pending in the application. Claims 1 and 14 have been currently amended.

Rejections under 35 U.S.C. §103(a)

Claims 1-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Godin *et al* (hereinafter: Godin) U.S. Patent 6,266,652 in view of Hogendoorn *et al* U.S. Publication 2002/0007339 (hereinafter: Hogendoorn).

Applicant believes that Godin's teachings cannot easily be modified to include the teachings of Hogendoorn.

As the Examiner stated, Godin fails to teach "upon receive of a bid calculating a bid time function, and accepting bids received in the order of a calculated bid time". Hogendoorn teaches a descending bid auction system that is based on a "pricing device" that decrementally alters an auction price for an item, and takes preregistered bids.

Based upon the combination of Godin and Hogendoorn, the examiner argues that Claim 1 "would be obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the teaching of Godin and include the teaching of Hogendoorn of calculating a bid time for said bid as a time to which said bid price has been assigned by said time function, and accepting bids received in the order of a calculated bid time" **because** "it allows the user of Godin system to submit bids in advance and not have to monitor the progress of the auction in order to submit a bid".

Applicant respectfully submits that the system shown and described by Hogendoorn specifically teaches the submission of preregistered bids before the auction cycle, and that Godin's method describes a server that decreases prices in selected time intervals. The applicant believes that the combination of these applications does not render obvious amended claim 1. The amended claim defines a bid time function that dynamically determines the price of the auctioned product according to changes over time. Additionally, the amended claim discloses an automated bidding utility which provides each bidder with the option to define either the bid price level he is ready to pay or the upcoming moment in time he is ready to wait for. Respectively, the automated bidding utility accordingly calculates the bidding level he needs to submit in order to win the auction or a future moment in time at which he presumably wins.

Neither Godin nor Hogendoorn discloses a mechanism that submits different offers on behalf of a certain bidder at the same auction during the intermediate time frame between the opening and closing of an auction according to two alternative variables, time and bid level, as in the present invention. Furthermore, none of the applications mentioned above discloses an automated mechanism that provides the bidder with the possibility to be provided with the exact future point in time that his offer will presumably be accepted or to evaluate the bid price level according to a requested bidding time in the future.

In order to establish a *prima facie* case of obviousness, the prior art references when combined must teach or suggest all the amended claim 1 limitations (*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). The prior-art references, as elaborated above, do not teach or suggest the automated bidding utility as defined in amended claim 1 and explained above, but only teaches "the calculation of a bid time for the bid as a time at which said bid price has been assigned by said time function", and "accepting bids received in the order of a calculated bid time". There is no explicit use of the bid time as in the present claim. Therefore, no *prima facie* case of obviousness is established regarding amended claim 1 limitations.

Referring now to claim 13, this claim also was rejected under 35 U.S.C. §103(a) as being unpatentable over Godin, in view of Hogendoorn.

Hogendoorn teaches a method that is based on "preregistered bid" where bids are accepted in an order of quantity. Godin's teachings cannot easily be modified to include the teachings of Hogendoorn in manner that renders obvious the present invention. Godin teaches a method using a reverse auction process (described above), in which the bids are resolved immediately at the current asking price, and the bidder knows exactly what price he is paying. Godin does not allow for bids to accumulate, as does the present invention, and so to include Hogendoorn's method, the system would have to calculate the total number of items purchased **at each price level**, and give the bid a preferred position over other bids retroactively, after the bids had already been processed. In addition, neither Hogendoorn nor Godin discloses the dependency of a price discount in a purchased volume.

By contrast, the present invention as claimed in claim 13 teaches that an individual bid is received at a calculated bid time when a certain quantity of goods have already been bid – the cumulative total at that particular calculated bid time. A price is calculated for **that** calculated bid time, based on **that** cumulative total. Godin

does not teach a calculated current price at a calculated bid time based on a cumulative current total at that calculated bid time, and neither does Hogendoorn, who teaches the use in quantities only in order to determine the preference of one preregistered bid over another.

The importance of the above is that for the first time the present invention enables the bidder to see the discount he will receive before the “bid time”, and this will give him added incentive to bid. The present invention states that “bidders are aware of previously made bids” in paragraph 2 of page 9. This awareness enables them to know the discount they will be entitled to should the number of bid items currently displayed remain unchanged until “bid time”.

Referring now to claims 9 and 14-18 which also was rejected under 35 U.S.C. §103(a) as being unpatentable over Godin in view of Rackson *et al* (hereinafter Rackson) U.S. Patent 6,415,270, Applicant believes that claims 9 and 14-18 are now to be allowable as being dependent on an allowable main claim.

However, Applicant further believes that even the original claims are patentable over Godin in view of Rackson. As mentioned by the Examiner, Godin fails to teach using data of existing bids to calculate a probability of acceptance a new bid at a given price level.

Godin's method does not teach using data of existing bids to calculate probabilities of success of new bids.

Rackson teaches a method of using charts to indicate the probability of a successful bid based on bidder-defined rules and input values. This is completely different from the present invention, which teaches the use of a **calculator** and memory for storing data of previous bids – data which is necessary for calculating the probabilities. Additionally, Rackson does not teach the method of reverse auction in which the asking price changes over time, as a function of time and/or as a function of quantity sold, as does the present invention (described in Page 2 last paragraph until page 3 second paragraph)

Furthermore, Godin's teachings cannot easily be modified to include the teachings of Rackson, and to use strategies and probabilities. Godin teaches a method using a reverse auction process, in which the bids are resolved immediately at the current asking price, and the bidder knows exactly what price he is paying. If the bidder does not respond immediately at the current asking price, he risks that there may not be any items left for him. Rackson's methods of strategies and probabilities,

if included in Godin's method, may help the bidder wait with his bid until the asking price drops to what is for him an acceptable level, but the bidder still has to stay "glued" to the screen until that time, and then make his bid, because Godin's method teaches a system where bids are resolved instantly.

The present invention as claimed in claims 9 and 14-18, on the other hand, greatly improves the situation in that it enables the bidder to calculate the probability of success for his bid during or before the auction, place his bid and return at a later time (after the calculated bid time) to check whether his bid has won.

Claims 2-12 are rejected under 35 U.S.C. §103(a) as unpatentable over Godin in view of Hogendoorn. Claims 2-12 are believed to be allowable as being dependent on an allowable main claim.

All of the issues raised by the Examiner have been dealt with. In view of the foregoing, it is submitted that all the claims now pending in the application are allowable over the cited reference.

An early Notice of Allowance is therefore respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, reading "Martin O Moynihan".

Martin Moynihan,
Registration No. 40,338

Date: December 5, 2005